



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

Case #: FOF - 158763

██████████, Respondent

---

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Office of the Inspector General  
Department of Health Services - OIG  
PO Box 309  
Madison, WI 53701

Respondent:

██████████  
████████████████████  
████████████████████

**ADMINISTRATIVE LAW JUDGE:**

Mayumi Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent's CARES number is ██████████.
2. On March 22, 2013, the Respondent completed an ACCESS application for FoodShare benefits indicating that she was homeless, but had a mailing address in care of a ██████ in Sheboygan. (Exhibit 3)
3. The Respondent received FoodShare benefits in Wisconsin from March 22, 2013 through July 31, 2013. (Exhibit 12)
4. The Respondent received FoodShare benefits in Louisiana from March 6, 2013 through July 1, 2013. (Exhibit 8)

5. On July 17, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the Respondent lied in order to receive Foodshare benefits and requested that she be disqualified from the FoodShare program for a period of ten years.

## **DISCUSSION**

### *Respondent's Non-appearance*

The Respondent did not appear for this hearing. This circumstance is governed by the regulation in 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. *Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence.* If the household member is found to have committed an intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, *the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.*

### *Emphasis added*

The hearing in this case took place on August 21, 2014. Megan Ryan, an Interstate Fraud Agent for the Office of Inspector General, indicated that the notice, which was mailed on July 17, 2014, to 65560 [REDACTED] [REDACTED] Louisiana, was not returned to the Office of Inspector General.

The DHA file had a number for the Respondent at (985) 520-2102. An unsuccessful attempt was made to contact the Respondent at that number and a voicemail message was left advising her of the hearing and the fact that she had 10 days in which to show she had good cause for her failure to be available. The Respondent did not contact the administrative law judge and did not submit anything within 10 days of the hearing date. As such, it is found that the Respondent did not have good cause for her non-appearance.

### *The Merits of OIG's Claim*

An IPV is defined at 7 C.F.R. §273.16(c) as intentionally: making a false or misleading statement or misrepresenting; concealing or withholding facts; or committing any act that constitutes a violation of the Food Stamp Act, federal regulations or any Wisconsin statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or an authorization to participate (ATP) card.

The Department's written policy restates federal law, below:

#### **3.14.1 IPV Disqualification** 7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

*FoodShare Wisconsin Handbook*, §3.14.1.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

In order for the agency to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence" used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases. It is used in civil cases where a higher standard is required because the outcome could result in

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that "yes" should be the answer because of its greater weight and clear convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the "middle burden." The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the opposite is true.

In the case at hand, the Office of the Inspector General (OIG) asserts that the Respondent violated the rules of the FoodShare Program by lying about her residence.

Per 7 C.F.R. §273.16(b)(5), “an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.” *See also FoodShare Wisconsin Handbook*, § 3.14.12

Specifically, OIG asserts that the Respondent either lied to Louisiana or she lied to Wisconsin about her residence, because she received benefits in both states between March 2013 and July 2013.

The March 22, 2013 ACCESS application (Exhibit 3) is reliable evidence as a regularly kept business record of the State of Wisconsin and is sufficient to establish that the Respondent reported that she was homeless, but living in Wisconsin. The CARES Worker Web Confirmed Assistance Group Eligibility History printout is also reliable as a regularly kept business record of the State of Wisconsin, and is sufficient to establish that the Respondent received FoodShare benefits in Wisconsin between March 2013 and July 2013. (Exhibit 12)

The Louisiana D.S.S. / O.F.S. Benefit History Inquiry printout (Exhibit 8) is reliable as a regularly kept business record of the State of Louisiana and is sufficient to establish that a person with the Respondent’s name and date of birth received Food Stamp benefits between March 2013 and July 2013. Given the matching name and date of birth and given that Ms. Ryan’s e-mail to Ms. [REDACTED] in Louisiana requested information for the Respondent under her social security number, it is reasonable, in the absence of any objection, to conclude that the individual receiving benefits in Louisiana and the Respondent are one in the same person. (See Exhibit 7)

In order to receive benefits in Louisiana, the Respondent would have had to have told Louisiana that she lived there, because pursuant to 7 C.F.R. §273.3, “ a household shall live in the State in which it files an application for participation” in the food stamp program. Thus, the Respondent either lied to Wisconsin or lied to Louisiana in order to receive benefits in both states.

There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. There is nothing in the record to rebut the presumption that the Respondent intentionally provided false information about her residence in order to receive duplicate benefits.

Accordingly, it is found that OIG has met its burden to prove by clear and convincing evidence that the Respondent committed an intentional program violation, as described in 7 C.F.R. §273.16(b)(5), by providing false information about her residence in order to receive duplicate benefits.

### **CONCLUSIONS OF LAW**

The Respondent committed an intentional program violation by providing false information about her residence in order to receive duplicate benefits.

**NOW, THEREFORE, it is ORDERED**

That the IPV that was the subject of this hearing is sustained and Respondent is hereby ineligible to participate in the FoodShare program for a period of ten (10) years, effective the first month following the date of receipt of this decision.

### **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

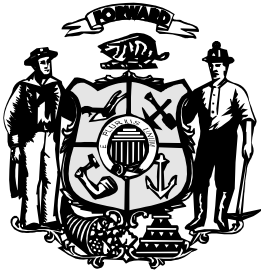
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 12th day of September, 2014.

---

\sMayumi Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

c: Office of the Inspector General - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
Megan Ryan - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAMail@wisconsin.gov](mailto:DHAMail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 12, 2014.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[megan.ryan@wisconsin.gov](mailto:megan.ryan@wisconsin.gov)